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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 358 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

[illegible]

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO. LTD.

Versus

HEIRS & L.R. OF DECD. KISHORBHAI POPATBHAI PARSANA

Appearance:

MR KK NAIR for Petitioner

NOTICE SERVED BY DS for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/03/99

ORAL JUDGEMENT

In this revision application under Section 115 of the Civil Procedure Code, the petitioner -Insurance

Company has challenged the communication/order dated 12.2.1999 from the Motor Accident Claims Tribunal (Main), Rajkot to the Divisional Manager of the petitioner-Company calling upon the Company to pay compensation under the Workmen's Compensation Act, 1923 (hereinafter referred to as the said Act or the Workmen's Compensation Act) with interest and penalty to the heirs of deceased-Kishorebhai Popatbhai who was the driver of the motor vehicle involved in a motor accident on 7.3.1994.

2. The heirs of the deceased had filed Motor Accident Claim Petition No. 1589/98 before the Motor Accident Claims Tribunal, Rajkot claiming a sum of Rs. 3 lacs under Section 166 of the Motor Vehicles Act, 1988. The Tribunal found that since the accident arose on account of negligence of the deceased-driver himself, the application filed by his heirs for compensation could not be tried by the Motor Accident Claims Tribunal, but the heirs were entitled to get compensation under the provisions of the Workmen's Compensation Act. The deceased was driving the motor vehicle in question belonging to respondent No. 6 herein-Parsottambhai Mavjibhai Siyani of M/s Shreeji Foundry in the course of his employment. The deceased was employed as a driver and was holding a valid driving license. The vehicle was also insured and the insurance policy disclosed that the petitioner-Company had taken premium for insuring the driver's risk also and, therefore, the petitioner-Company was liable to pay compensation under the Workmen's Compensation Act. In the impugned communication/order, after referring to the above facts, the Tribunal mentioned that merely because the heirs of the deceased-driver had by misunderstanding or mistake filed the claim petition before the Motor Accident Claims Tribunal instead of filing the same before the Commissioner for Workmen's Compensation, the applicants were not disentitled to get the compensation. The Tribunal further observed that under the amended provisions of the Workmen's Compensation Act, the employer and the Insurance Company ought to have deposited the compensation with the Commissioner for Workmen's Compensation without any application having been filed and since that was not done, the Insurance Company was liable to pay interest and penalty. Hence, if the Insurance Company did not deposit the amount of compensation under the Workmen's Compensation Act before the Tribunal within one month, the Tribunal would take appropriate action against the officer responsible for disobedience and that the order was passed in presence of the learned counsel for the petitioner-Insurance Company

before the Tribunal. The petitioner-Insurance Company has filed the present revision application to challenge the aforesaid communication/order of the Tribunal.

3. In the order dated 4-3-1999 while issuing notice on this revision application for final disposal, this Court clearly mentioned the order which the Court proposed to pass subject to hearing the parties to the present proceedings. It was also made clear in the order that if the respondents herein were agreeable to the proposed order being passed, they may not remain present before this Court. The Notice was sent in Gujarati as directed by this Court earlier. The respondents are served accordingly.

4. None appears to oppose the order which the Court had already proposed to pass as mentioned in the order dated 4-3-1999. The learned Counsel for the petitioner also states that the petitioner-Insurance Company is also agreeable to the order being passed as proposed and to deposit the sum of Rs.81540 as the amount of compensation payable to the heirs of Kishorbhai Popatbhai Parsana under the Workmen's Compensation Act, alongwith interest as per the provisions of the said Act, but without penalty.

5. In view of the above and in the facts and circumstances of the case, it is ordered as under:

(i). In exercise of the suo motu power under Article 227 of the Constitution. it is directed that the Claim Case No.1589 of 1998 pending before the Motor Accident Claims Tribunal (Main) Rajkot shall stand transferred to the Commissioner for Workmen's Compensation at Rajkot as an application for compensation under the Workmen's Compensation Act, 1923.

(ii). The petitioner-Insurance Company shall deposit the amount of Rs.81,540/- being the amount of compensation payable to respondents nos 1 to 5 under the Workmen's Compensation Act, alongwith interest in accordance with the provisions of the said Act. The amount of compensation alongwith interest thereon as aforesaid shall be deposited before the Commissioner for Workmen's Compensation at Rajkot, within six weeks from today.

(iii). It is held that the petitioner Insurance Company

is not liable to pay the amount of penalty under the said Act and that the amount of penalty shall be paid by respondent no.6 -employer.

(vide decision of the Hon'ble Supreme Court in Ved Prakash Garg Vs. Premi Devi & Ors, 1998 Accident Claims Journal 1)

(iv). The amounts to be deposited by the Insurance Company before the Commissioner for Workmen's Compensation are apportioned as under:

1. Madhuben Kishorbhai Parsana, 40%
widow of deceased Kishorbhai Parsana.
2. Minor Ravin Kishorbhai Parsana: 15%
son of the deceased.
3. Minor Dharmesh Kishorbhai Parsana: 15%
Son of the deceased.
4. Popatbhai R.Parsana 15%
father of the deceased .
5. Rambaben Popatbhai Parsana. 15%
Mother of the deceased.

(v) The amounts which will be deposited by the Insurance Company as aforesaid shall be invested in the Fixed Deposits in the names of the concerned heirs with any nationalized bank for a period of five years from the date of investment and in the case of minors the said Fixed Deposit Receipts shall be for the period till the concerned minor attains majority or for five years whichever is longer. The periodical interest accruing on such Fixed Deposits shall be paid to the concerned heirs to whom the amount as aforesaid is apportioned. Madhuben Kishorbhai -widow of the deceased shall be permitted to withdraw periodical interest accruing on the FDRs of herself and of her minor sons for maintaining herself and her minor sons.

No encashment of or loan or encumbrances

on the said Fixed Deposits shall be permitted without express prior permission of the Commissioner for Workmen's Compensation at Rajkot.

(vi). Respondent no.6 - the employer M/s.Shreeji Foundry - shall pay 50% of the principal amount of compensation i.e. Rs.40,770/- as penalty.

(vii). The impugned communication/ order dated 12-2-1999 now does not survive and is quashed and set aside.

6. Before parting with the matter, this Court would like to observe that even if the principles and procedure for awarding compensation under the Motor Vehicles Act may be different from the principles and procedure for payment of compensation under the Workmen's Compensation Act, atleast in so far as the claims being made in respect of accidents arising from the use of motor vehicles are concerned, there is no reason why the powers of entertaining and deciding applications for payment of compensation to the injured workmen /heirs of the deceased workmen in respect of accidents involving the death of, or bodily injury to persons arising out of the use of motor vehicles should not be vested in the same judicial forum, whether the claim is made under the Motor Vehicles Act or under the Workmen's Compensation Act. Of course under the Motor Vehicles Act, the power to entertain such petitions are conferred on the District Judges, Joint District Judges and Assistant Judges and the jurisdiction to entertain such petitions under the Workmen's Compensation Act are conferred on the Judges of Labour Courts under Section 20(1) of the latter Act. Earlier such jurisdiction was conferred on the Civil Judges (S.D.). The Court feels confident that the District Judges and other judicial officers in the Disitrikt Court would prefer to be vested with such jurisdiction under the Workmen's Compensation Act in respect of applications for compensation arising from accidents involving motor vehicles rather than writing communications - such as are impugned in the present petition - or rather than allowing the victims of the accident to suffer by not getting compensation for a few more years. It is quite likely that an accident may involve more than one motor vehicle and one of the injured drivers, or in case of a fatal accident his heirs, file a claim petition before the Motor Accident Claims Tribunal against the driver, owner and Insurance

Company of the other vehicle. It is only at the conclusion of the trial of the claim petition after a number of years that the Tribunal may come to the conclusion that the accident was caused by the sole negligence of the applicant-driver/the deceased driver and therefore the claim petition would be dismissed by the Tribunal and thereafter requiring such claimants to file another application for compensation before the Commissioner for Workmen's Compensation is bound to unnecessarily delay recovery of compensation by the claimant/s. The difficulties of the claimants are compounded, as Section 167 of the Motor Vehicles Act, 1988 precludes the applicant from claiming compensation under both the Acts. The section reads as under:

167. Option regarding claims for compensation in certain case. Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death or, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

It would, therefore, be conducive to the interests of justice to confer jurisdiction under both the Acts on the same judicial forum. This would enable the learned Judge exercising the powers of the Tribunal under the Motor Vehicles Act, in case such as the present one, to treat the application under the Motor Vehicles Act as an application under the Workmen's Compensation Act and to try and decide the same at the earliest.

7. The Office is, therefore, directed to send a copy of this order to the State of Gujarat, through the Secretary, Legal Department and to the High Court of Gujarat on the administrative side through the Registrar to consider why jurisdiction may not be vested in the same forum for deciding claim petitions under the Motor Vehicles Act as well as applications for compensation under the Workmen's Compensation Act, 1923 in respect of accidents involving the death of, or bodily injury to persons arising from accidents out of the use of motor vehicle/s in view of the observations made in the preceding paragraph.

8. The Court would like to place on record its

appreciation for the constructive approach and the assistance rendered by the learned counsel for the petitioner for expeditious disposal of this Revision Application and also for ensuring that the heirs of the deceased workman get compensation immediately.

9. This Civil Revision Application accordingly stands disposed of in terms of the directions contained in para 5 hereinabove.

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